

REMARKS

Claims 1-21 stand rejected. No new matter has been added. Applicants thank the Examiner Graham for his helpful comments during a telephonic interview with the undersigned on January 26, 2010. Applicants respectfully request reconsideration in view of the following remarks in which the substance of the interview is provided.

Claim Rejections - 35 U.S.C. § 102(e)

Claims 1-21 were rejected under 35 U.S.C. § 102(e) as being anticipated by U.S. Patent 7,567,909 ("Billingsley").

Claims 1 and 12 respectively recite a computer system and a method for exchanging a financial note for a quantity of non-cash financial item (e.g., stocks, stock options, bonds or other financial instruments). Specifically, claims 1 and 12 respectively recite structure for and steps of: (1) calculating a value of the financial note based upon a level of an index that represents a first set of one or more non-cash financial items, and (2) delivering a quantity of a second, different set of one or more non-cash financial items to an investor in exchange for the note based upon a ratio of the calculated value of the note and the price of the one or more financial items in the second set. Support for these claims can be found at least in FIGS. 1 and 2 and paragraphs [0034], [0043], [0045], and [0058] of the patent application as published, namely U.S. Patent Application Publication No. US2002/0107771.

For example, according to FIGS. 2-3, the Applicants disclose a particular embodiment in which the computer system issues a note to an investor whose value is based on the performance of the German stock index DAX and is exchangeable into stocks of the issuer's portfolio. Subsequently, upon request or maturity of the note, the computer system selects one or several different stocks of the issuer's portfolio to be delivered to the investor. Although the particular number of stocks delivered to the investor may vary depending on the performance of the DAX and the development of the stocks delivered to the investor, the total value of the stocks delivered to the investor depends on the performance of the DAX. See paragraphs [0044-0045, 0050-0052, 0054-0059] of the application as published.

In contrast, Billingsley proposes the use of “value notes,” which can be in the form of electronic messages that represent a commodity. (col. 3, lines 38-40) The commodity represents the redeemable value of the value note. Billingsley suggests that the value of the commodity may be any of “(a) a fixed value specified in the value note, e.g. GB£8.50; (b) a variable value defined by a formula or rule which is defined in the value note...; or (c) a fixed or variable value identified by a name or label, which cross refers to a known or established value, which may be defined absolutely, or by an established rule or formula...” (col. 4, lines 34-48). As an example, Billingsley suggests that “value notes may be used to represent spreads of options for share index futures.” (col. 25, lines 8-52).

Upon redemption of such notes, however, Billingsley asserts that “if the note represents money, then the value is equivalent to cash. Similarly, if the note represents an agreement or offer to supply goods or services, or if it represents bonds, shares, or a lottery ticket, then this is the redeemable value in the note.” (col. 4, line 65 to col. 5, line 3). Accordingly, Billingsley does not disclose a note whose value is calculated based on the level of an index that represents a first set of non-cash financial items (e.g. stocks, bonds, etc.), but is redeemable for a quantity of a second, different set of non-cash financial items. Specifically, Billingsley fails to teach or suggest “calculating a value of the note based upon a level of an index representative of a first set of one or more non-cash financial items ... and ... delivering a quantity of a second, different set of one or more non-cash financial items to the investor in exchange for the financial note ... based upon a ratio of the calculated value of the note and price of the one or more non-cash financial items in the second set” as recited in claims 1 and 12.

For at least these reasons, claims 1 and 12 are patentable as they are neither obvious nor anticipated in view of Billingsley.

Furthermore, by virtue of at least their dependency upon claims 1 and 12 and the additional features recited therein, claims 2-11 and 13-21 are also patentable.

CONCLUSION

In view of the above amendments and remarks, it is believed that claims 1-21 are in condition for allowance, and it is respectfully requested that the application be passed to issue. If the Examiner feels that a telephone conference would expedite prosecution of this case, the Examiner is invited to call the undersigned.

Respectfully submitted,

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